

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 245 of 2003

with

SPECIAL CIVIL APPLICATION No 325, 574, 795, 1766, 3213,
3432, & 4405, all of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MOHAN KALYAN TANDEL

Versus

STATE OF GUJARAT

Appearance:

M/S ZUBIN F BHARDA, SUBHADRA PATEL, HR PRAJAPATI, SA
QURESHI, BANNA DUTTA, KU MISHRA, & DEVANG VYAS for
Petitioners

MR SUDHANSHU PATEL, AGP for Respondent No. 1-3 in SCAs
No.574, 795 and 3213 of 2003

MS MITA PANCHAL, AGP for Respondent No. 1-3 in SCAs

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 05/06/2003

ORAL JUDGEMENT

#. Age old contest between liberty and detention has once again surfaced in this group of petitions at the instance of the detenus by invocation of the provisions of Article 226 of the Constitution of India.

#. In this group of eight petitions, challenge against the detention orders passed under Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act") is on divergent grounds. However, the main ground which goes to the root of the matter is about the delay in passing the detention orders from the date of last offence registered against the detenu, and as such, upon consensus, this group is being disposed of by this common judgment.

#. Liberty is a basic and dynamic jurisprudential concept and philosophy, and therefore, it has constitutional and statutory safeguards for the preservation, projection and protection of the liberty of an individual. Since it is a dynamic aspect and concept, continued research is necessary to regularly assess the changing dimension and dynamics of such a constitutional right, personal right of liberty guaranteed under the Constitution, the highest law of the land.

#. Preventive detention has long standing and deep rooted base in this country. The preventive detention is a serious in-road and encroachment on the liberty of a person. All human beings are born with free and equal rights. All human beings are, no doubt, gifted by their creator with certain unalienable, nontransferable, nonnegotiable natural rights. Justice, liberty and equality have been pursuits of human kind and are sine qua non for organized civilized society. Preservation of human life is the most important right for an individual. The personal liberty has been claimed, and, as such, has been acclaimed as a part of the right to life and for the development and protection of this concept, Courts have taken utmost care to protect various aspects of personal

liberty as part of protection of life. Article 21 provides for everyone, right to life, liberty and security of person. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22(5) also provides requisite and sufficient safeguards while encroaching upon the right to personal liberty of an individual. Under various detention laws, the competent authorities are empowered to pass order of detention, provided material and important constitutional and statutory safeguards are observed, and subjective satisfaction has been reached on an objective assessment of the sufficient material. With this prefatory profile of the preventive detention law, it would be interesting and imperative to assess, evaluate and adjudicate upon the challenge to the detention orders in these petitions on the basis of material emerging from the record.

#. The learned advocates appearing for the petitioners and the learned Assistant Government Pleaders appearing for the respondents have offered their rival submissions. They have also taken this Court through the entire testimonial collection and documentary evidence in support of their submissions. This Court has also meticulously examined the factual profile emerging from the record of these petitions.

#. As stated above, the main contention propounded before this Court in this group of petitions on behalf of the petitioners is that the detaining authority has passed the questioned orders of detention after a considerable delay from the date of registration of last offence against the detenu and that too, without satisfactorily explaining the same. It is needless to reiterate that when the detention law empowers the statutory authority or the competent officer to curb and control the liberty of an individual under the rule of law, material safeguards enshrined in the Constitution as well as the relevant statutory provisions of law are required to be observed in letter and spirit. Again, it may be noted that delay at any stage in detention matters would affect the right to make effective representation against the detention order. From the record of these eight petitions filed under Article 226 of the Constitution of India, a common grievance and contention which has been advanced is about delay in passing the detention orders from the date of last offence registered against the detenu, thereby affecting the valuable right of the detenu. In view of the clear constitutional mandate enshrined in Article 22(5) of the Constitution of

India, the detaining authority has to ensure that when any person is detained in pursuance of an order made under any law, the grounds on which such order is made are communicated to such person as soon as possible and earliest opportunity of making a representation against such order is afforded to such person. Article 22 of the Constitution of India consists of two parts. Clause (1) and (2) apply to persons arrested or detained under the law other than preventive detention law and clause (4) and (7) apply to cases of persons arrested or detained under the preventive detention law. It is in this context that it has to be seriously considered that detention of a person is not viewed by the detaining authority in an indifferent and lethargic manner culminating into delay at any stage, and it is incumbent upon the authority or the competent officer to see that no delay occurs, and that expeditious decision making process is undertaken, and in any case, delay has occurred or has occasioned, then it is explained satisfactorily.

#. In all these eight petitions, delay which has occurred is of varying period, but in the facts and circumstances of the case, it has remained unexplained and whatever is sought to be explained is not satisfactory. When a drastic remedy under the preventive detention law has to be exercised, the proposed action for passing the detention order must have a nexus and a live link between the impugned commission or omission or actions. It is therefore necessary for the authority to take care and caution so as to see that the constitutional and statutory safeguards are properly observed. It is found without any doubt from the record of these petitions that inordinate and unreasonable delay in passing the detention order ranging from one month and fifteen days to almost seven months is there. In some cases, affidavits are filed. Even in case of filing the counter, it is incumbent upon the authority to explain unreasonable and inordinate delay in passing the order of detention, which is not so in the present group of petitions. If it is successfully spelt out or noticed from the record that the vital link between the prejudicial activities snapped, the registration of offence for such prejudicial activities, and the time taken for passing the detention order is missing, then it has to be presumed that such detention order has been passed without authority or for wrongful purposes. It is in this context that it becomes imperative for the Courts to exercise constitutional writ redressal under Article 226 of the Constitution of India to quash and set aside such orders under the preventive detention law, more

particularly, when there is no vital link between the offending act and proper application of mind. So the sum and substance is that if there is delay, what is required by law is that the delay has to be satisfactorily accounted for or explained by the detaining authority so as to obliterate and snapping of link between the prejudicial activities and the purpose of detention. In the facts of the case, delay has not been explained, much less, satisfactorily. In the opinion of this Court, therefore, there is ample substance in the plea of delay. It is therefore that the detention order questioned in this writ petition under Article 226 of the Constitution of India cannot be sustained. The detention order, therefore, cannot be said to be legal and valid, and deserves to be quashed and set aside on this ground alone. The view which this Court is inclined to take is also very much supported by the following decisions:

a) Thakore Girishji @ Gidhaji Jenaji v. District Magistrate & Ors. 2002(1) GCD 338

b) Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad City - 1997(1) GLH 381

c) Pradeep N.Paturkar v. S.Ramamurthi - AIR 1994 SC 656

#. In the result, the petitions succeed and the same are allowed. The questioned detention orders passed under the PASA Act in all the eight petitions are quashed and set aside, and, therefore, the concerned authorities are directed to release and set at liberty forthwith, the detenu in each petition, if not required in any other case. Rule is made absolute in each petition. The parties are directed to bear their own costs.

(J.N.Bhatt, Acting C.J.)

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